PRAIRIE ISLAND INDIAN COMMUNITY
LEGAL DEPARTMENT

July 6, 2011

Honorable Lee Hamilton
Lieutenant General Brent Scowcroft
Co-Chairmen
Blue Ribbon Commission on America's Nuclear Future
c/o U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Via Email:
CommissionDFO@nuclear.energy.gov
& U.S. Mail

Re: Comments on Draft BRC Subcommittee Reports

Dear Co-Chairman Hamilton and Co-Chairman Scowcroft:

The Prairie Island Indian Community (PIIC or Community) would like to offer the following comments and recommendations to the Blue Ribbon Commission on America's Nuclear Future (BRC or Commission) on the draft reports issued by the Transportation and Storage and Disposal subcommittees.

The Prairie Island Indian Community has a keen interest in the recommendations of the BRC and its subcommittees. The Prairie Island Nuclear Generating Plant (PINGP), owned by Northern States Power Company d/b/a Xcel Energy (Xcel), is immediately adjacent to our homeland. *See* Figure 1. The PINGP has been on line since the early 1970s and will likely operate until 2034. Like many utilities, Xcel is also licensed by the NRC to store spent fuel on site at a site-specific Independent Spent Fuel Storage Installation (ISFSI). The ISFSI is approximately 600 yards from the nearest Community residences, and is located on the west bank of the Mississippi River in an area that is quite popular for recreational boating and heavily used by barges. *See id.* If the PINGP is decommissioned in 2034, the spent fuel is estimated to require a total of 98 casks – approximately 2500 tons of spent nuclear fuel. Xcel has already announced its intention to amend its ISFSI license, which currently allows for storage of 48 casks. The PIIC does not want the PINGP's spent fuel stored on Prairie Island indefinitely. We hope that the federal government will finally fulfill its promise – its legal obligation – to remove the spent fuel from our homeland as soon as possible, and that the efforts of the BRC will expedite that removal.

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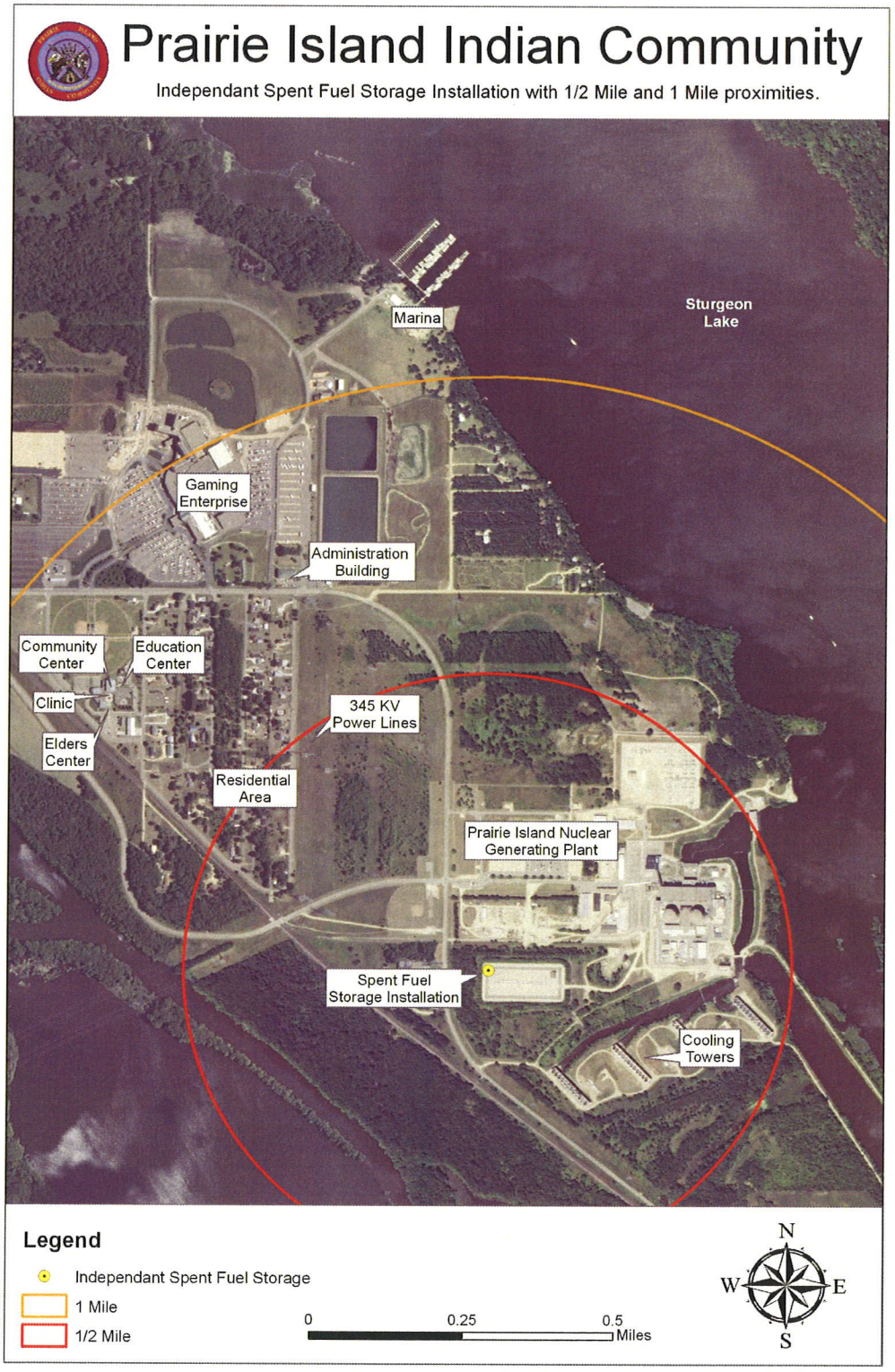
Prairie Island Indian Community
Independant Spent Fuel Storage Installation with 1/2 Mile and 1 Mile proximities.
Marina
Sturgeon Lake
Gaming Enterprise
Administration Building
Community Center
Education Center
Clinic
Elders Center
345 KV Power Lines
Residential Area
Prairie Island Nuclear Generating Plant
Spent Fuel Storage Installation
Cooling Towers
Legend
Independant Spent Fuel Storage
1 Mile
1/2 Mile
0
0.25
0.5
Miles
N
W
E
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Figure 1

General Comments

While the PIIC appreciates the efforts of the BRC, and supports many of its preliminary recommendations (as set forth more fully below), it is nevertheless frustrating to our Community that 27 years after passage of the Nuclear Waste Policy Act, we are back to square one in evaluating how to implement the NWPA's mandate to remove spent fuel to a permanent repository. Furthermore, it is remarkable to the point of absurdity that "*interim*" on-site storage refers to "*storage for multiple decades up to a century or more*"! Words like "temporary" and "interim" seem to lose their meaning when used to describe "decades" or "centuries." The decision to strand spent nuclear fuel on site indefinitely ought to require thorough, rigorous site-specific suitability and safety analysis, and comprehensive, long-term, site-specific human health and environmental impact studies. And for existing sites like Prairie Island that were intended for short-term storage (10, 20 or 30 years or less), then the site-specific suitability, safety, health and impact analysis also ought to begin back at square one to evaluate spent fuel storage of a fully-loaded ISFSI (98 casks) for multiple decades up to a century or more.

The ISFSI and its casks (and all of the associated risks) are right next to our homes, our community center, our government offices, our church, our recreational areas, and our businesses. As PIIC representatives have stated in testimony and letters to the BRC and meetings with the BRC staff, our Community has long-standing, unresolved health, safety, and environmental concerns about the long-term storage of spent nuclear fuel so close to our Community. While the PIIC is a *de facto* host community given its proximity to the PINGP and ISFSI, it receives none of the tax revenues and other financial benefits that communities typically receive in exchange for hosting nuclear power plants and waste storage facilities. Our Community members bear the greatest risks, yet the PIIC receives virtually no benefit. No other community in the United Sates is – or should be – in this predicament.

In addition, it is not clear from the draft reports how the BRC will implement and fulfill the meaningful consultation and collaboration requirements with the PIIC and other affected Indian tribes as required by Executive Order 13175. The PIIC Tribal Council looks forward to meaningful consultation and collaboration with the BRC on the significant policy recommendations and decisions that are being contemplated regarding the spent fuel stored at the PINGP ISFSI less than one-half mile from the nearest residences on our reservation. *See* Figure 1.

Transportation and Storage Subcommittee Report

Recommendation 1: The United States should proceed expeditiously to establish one or more consolidated interim storage facilities as part of an integrated, comprehensive plan for managing the back end of the nuclear fuel cycle. An effective integrated plan must also provide for the siting and development of one or more permanent disposal facilities.

The PIIC supports this recommendation. We believe that one or more consolidated interim storage facilities will benefit the utilities and provide benefits to the volunteer host communities.

Despite our general support for Recommendation 1, some concerns remain:

The report states "there are compelling reasons to establish consolidated interim storage on a regional or national basis while (emphasis added) progress is made toward implementing a permanent disposal solution." Does this mean that there cannot be a consolidated interim facility unless a permanent facility is in progress? What is meant by progress? A site selected? A completed environmental impact statement? A license application submitted? "Progress" should be better defined in the BRC draft report.

It should also be clearer how the schedules for implementing the interim facilities and disposal facility are linked, if at all.

What is the time-line for implementing these proposals? Ten years? Twenty years? Fifty years? This should be discussed in the draft BRC report.

It is not clear how long waste could conceivably stay at an interim storage facility. Recommendation 2 states that on-site, at reactor interim storage is 100 years (page iv, Executive Summary). Are host communities willing to have these facilities in their communities for 100 years?

If after several decades there is no or insufficient "progress" on a repository, could waste be shipped back to its point of origin? What if a site has been fully decommissioned? What assurances will be in place that once the spent fuel leaves it won't come back?

What are the capacity limits? How much spent nuclear fuel will be stored at each consolidated facility? What will happen when capacity has been reached and there is still no progress on the repository?

What will the costs be for one or more interim facilities? Can the Nuclear waste Fund generate enough funding to develop and operate one or more interim facilities AND

develop and license a repository? Already about a third of the NWF ($10 Billion) has been spent on a repository that some hope will never open.

The Private Fuel Storage (PFS) facility in Utah is already licensed by the NRC. It would behoove the government to begin discussions with the Skull Valley Goshute tribe regarding the use of the PFS facility as a government consolidated interim facility.

The history of the disposal program is murky and fraught with missteps that lead us to be very skeptical that any solutions to the waste problem will actually occur sometime in the future. Our community is tired of waiting for solutions that never materialize.

Recommendation #2: Recognizing the substantial lead-times that may be required in opening one or more consolidated facilities, dispersed interim storage of substantial quantities of spent fuel at existing reactor sites can be expected to continue for some time. The Subcommittee has concluded that there do not appear to be unmanageable safety or security risks associated with current methods of storage (dry or wet) at existing sites. However, to ensure that all near-term forms of storage meet high standards of safety and security for the multi-decade-long time periods that are likely to be in use, active research should continue on issues such as degradation phenomena, vulnerability to sabotage and terrorism, full-scale testing, and other matters.

We do not agree with nor do we support "interim" storage at existing reactor sites such as the PINGP. The ISFSI at Prairie Island was sold to our Community and the public as a temporary measure to keep the PINGP running until the national repository at Yucca Mountain could be licensed to accept waste. We do not believe that a 100-year time period can be considered *interim*.

We also disagree with the Subcommittee's conclusion that there do not appear to be unmanageable safety or security risks associated with current methods of storage (dry or wet) at existing sites. From our perspective, there is not sufficient analysis or data to support this conclusion. Because the existing sites were sited and analyzed as temporary storage facilities, we do not believe there has been adequate site-specific analysis of safety or security risks for the so-called interim storage for multiple decades up to a century or more. The decision to strand spent nuclear fuel on site indefinitely ought to require thorough, rigorous site-specific suitability, safety and security analysis, and comprehensive, long-term, site-specific human health and environmental impact studies. And for existing sites like Prairie Island that were intended for short-term storage (10, 20 or 30 years or less), then the site-specific suitability, safety, security, health and impact analysis also ought to begin back at square one to evaluate spent fuel storage of a fully-loaded ISFSI (98 casks) for multiple decades up to a century or more. Moreover, we do not believe that existing ISFSI licenses should be extended or expanded until comprehensive, site-specific analysis is completed.

The final report should include a full discussion of the Waste Confidence Rule and its implications for 100-year interim storage.

At the May 13, 2011 meeting of the BRC, during which the subcommittees presented their draft recommendations, there was a great deal of discussion regarding the recent events at the Fukushima Daiichi Nuclear Power Station. And rightly so. Those tragic events and the on-going struggles in Japan demonstrate the enormous risks and incomprehensible devastation of worst-case scenarios for nuclear reactors and spent fuel storage facilities. News coverage provides a small, limited glimpse of the immediate human and environmental devastation, but the long-term health and environmental impacts of the Fukushima disaster will not be fully known for generations. And even though media coverage cannot fully convey the unimaginable struggles of the nearest residents to the Fukushima plant, our Community members watched as the Japanese people endured the horrible reality of an out-of-control nuclear disaster. What if Prairie Island was rendered uninhabitable by a tragic event at the PINGP or ISFSI? What if PIIC members had to abandon their homes with little or no warning? What if PIIC members were never able to return to their homeland? Our Community members' worst fears cannot be so readily dismissed as unreasonable or unlikely when they are being lived out by the Japanese people.

The Fukushima tragedy should provide significant lessons for America's nuclear and spent nuclear fuel storage policies. For example, if "interim" refers to a time period of "multiple decades up to a century or more," then is it reasonable to rely upon limited historical records to establish the design basis for nuclear reactors, spent fuel pools or dry casks? For example, were the 8.9 or 9.0 magnitude earthquake and resulting tsunami truly "extraordinary or unexpected events"? To be sure, devastating earthquakes, tsunamis, floods and other natural disasters may be considered extraordinary when they cause widespread damage and devastation, but can they truly be called unexpected? The history of our planet and the history of natural phenomena and natural disasters are far longer than recorded human history. Because historical records of extraordinary events (i.e. earthquakes, tsunamis, floods) date back merely hundreds of years, would natural phenomena or disasters be considered "extraordinary or unexpected events" simply because they were of greater magnitude or severity than those observed and recorded during the limited period of historical record keeping? Have we accurately identified worst-case scenarios? Are the design bases for reactors, spent fuel pools and dry casks as conservative and robust as they should be? A 9.0 magnitude earthquake was considered improbable – what about earthquakes along old fault lines in Minnesota and adjacent to the Mississippi River? What about 500-year, 1,000-year or 2,000-year flooding along the Mississippi River? Can it be said with reasonable assurances that the PINGP and ISFSI are designed to withstand historic or supposedly unprecedented flooding or other natural disasters? Moreover, we do not believe that existing ISFSI licenses should be extended or

expanded until completion of an independent investigation of the events at Fukushima and their implications for safety and security requirements a spent fuel storage sites.

Recommendation #3: ***Spent fuel currently being stored at decommissioned reactor sites should be "first in line" for transfer to a consolidated interim storage facility as soon as such a facility is available.***

Subject to certain qualifications (as outlined by the Subcommittee and discussed below), we support the recommendation that fuel from decommissioned plants should be moved to the consolidated interim storage facilities first. As a general matter, by doing so, the handful of shut down plants in the county can be fully decommissioned and the land released for unrestricted use, allowing communities the opportunity to redevelop these sites.

Since there is no timeline for either the recommended consolidated interim facilities or repository, it is unclear how this recommendation impacts the plants that will be decommissioned in the future. To be sure, many plants are currently operating with extended licenses (including the PINGP which was just relicensed until 2034). As the history of this program has shown us, twenty year license extensions does not provide that much planning or lead time. In other words, there will be a number of plants shutting down, in the near future (2030), in communities that do not wish to be saddled with stranded spent nuclear fuel. The final report must include a broader discussion of the number of plants that will be decommissioned in the future, when, their respective spent fuel inventories, and how these factors relate to the schedule for the consolidated facility.

In addition, we agree with the Subcommittee that future decisions about how to prioritize or sequence the transfer of spent fuel from reactor sites should be driven first by safety and risk considerations, and then by issues related to cost. Given those considerations and parameters, we believe that the spent fuel stored on Prairie Island along the Mississippi River floodplain less than one-half mile from the nearest Community residences would qualify for expedited removal.

Recommendation #4: ***A new integrated national approach is needed to revitalize the nation's nuclear waste program. A new organization charged with developing one or more permanent disposal facilities should also lead the development of consolidated storage and transportation capabilities.***

While we support the creation of a new entity that would be responsible for implementing the Nuclear Waste Policy Act (NWPA), including the development of one or more interim consolidated facilities and a repository, we have a number of concerns that did not appear to be addressed in the draft report, including what the realistic timeframe for developing such an entity would be.

We will provide additional comments later in this letter on specific concerns related to the proposed new entity in our Disposal Subcommittee report comments.

Recommendation #5

We support the recommendation that the process for developing and implementing the integrated waste management program must be "science-based, consent-based, transparent, phased, and adaptive."

We go into this in greater detail in our Disposal Subcommittee report comments, but it goes without saying that politics should play no role in this matter. However, history has shown us that what is acceptable to a community at one moment in time can be unacceptable to the community in the future. Political pressure has sidetracked the Yucca Mountain project.

Recommendation #6

We support this recommendation. What is needed is a campaign to educate the public about the safety record of transporting spent nuclear fuel, the rigorous testing of casks, federal regulations governing shipments, and the relative risks of shipments of commonly transported commodities (i.e., petroleum products, hazardous chemicals, etc.). This should happen well in advance of any shipments.

Recommendation #7

We support this recommendation, but with many concerns.

The success of this recommendation will depend on how much authority, autonomy, and fiscal discretion this new entity will have. How likely it is that Congress will relinquish its appropriation authority to this new entity?

We believe that the American ratepayers are owed an apology for wasting $10 Billion dollars on a repository that was cancelled for political reasons. It should be recognized that access to funding is one of the reasons the Yucca Mountain program was so far behind schedule. Funding access (or lack thereof) has been used as a political mechanism for stopping progress on the program. Had the program been fully funded, the DOE would likely have achieved greater progress on the development of Yucca Mountain (i.e., licensed by the NRC to accept waste) and it would be unlikely that we would be starting over now twenty-seven years later.

Now, the American ratepayers are being asked, as taxpayers, to cover the government's partial breach of contract liability, in the amount of $16 Billion, if the waste starts to move in 2020 (a mere 8 and a half years away) and litigation costs. We believe that it is unrealistic to believe that waste will move in 2020 and litigation will cease. Utilities and

state regulatory agencies (on behalf of the ratepayers) will still seek to hold the government accountable for non-performance. We do not agree that taxpayer money is being wasted in unnecessary litigation. As stated above, the ratepayers have paid in over $30 Billion to the NWF. As utilities developed on-site storage, ratepayers were asked to cover these additional costs. Many of the lawsuits were initiated on behalf of the ratepayers, who were paying twice and getting nothing in return.

It is also unrealistic to assume that future a Congress or Administration will not undermine or change what is being contemplated today by the BRC, as the history of this program have taught us.

Disposal Subcommittee Report

Recommendation #1

We support the development of a permanent deep geologic repository, as the "most promising and technically accepted option available for isolating high-level nuclear wastes for very long periods of time."

A deep geologic repository has already been developed in this country. It has yet to be determined whether the Yucca Mountain site will meet the safety and regulatory standards established in the NWPA and other laws. As the Atomic Safety Licensing Board (ASLB) decided a year ago, the Secretary of Energy lacks the authority to withdraw the application for Yucca Mountain and the NRC must review the application once a qualified application is before the ASLB. The Administration, or the BRC on behalf of the Administration, owes the American ratepayers a technical explanation as to why their $10 Billion investment in the Yucca Mountain project failed.

How long will it take to develop and license a repository? The American people deserve to know how much longer it will take to develop and license a repository. What assurances can be provided that this process won't be scrapped in another twenty-seven years?

Recommendation #2

We support the recommendation to establish a single-purpose organization to develop and implement a focused and integrated program. If this entity can be insulated from political pressures, it just might succeed.

We do have concerns regarding how this new federal entity will be established. However such an entity is organized, the trust obligations and responsibilities owed to federally-recognized Indian tribes should be clearly expressed. Indian tribes are governments with unique legal and political standing. Tribes are not the same as states or political subdivisions of the state (i.e., counties). Tribes are not "stakeholders." Indian tribes signed

treaties with the United States government. We expect a government-to-government relationship with all agencies of the government. We expect that federal agencies will always consider tribal interests when making decisions that affect tribal lands, people, and resources.

We have had extensive interactions with the NRC, an independent agency of the federal government. Unlike most federal agencies, the NRC has not developed an Indian Policy to define how it will fulfill its Trust responsibilities, work with Indian tribes, and make decisions affecting tribal lands, resources, and people. In our experience, the NRC view is that if regulations and statutes that protect the public at large are complied with, the agency has met its Trust responsibilities. Tribes are not the public. In our view, Trust responsibility means that the agency *must go beyond the minimum* required to protect the public.

Since the recommendations made by both the Disposal and the Transportation and Storage subcommittees have the potential to affect most of Indian Country, we recommend that there be a more robust discussion of how this new federal entity would work with tribes. Before issuing its draft recommendations, the BRC should consult with potentially-impacted Indian tribes for their views and expectations on government-to-government interactions in accordance with Executive Order 13175.

It is curious that the neither the Disposal Subcommittee nor the Transportation and Storage Subcommittee mentioned the paper written by Peter Chestnut, discussing the role of Indian tribes in America's nuclear future, which was commissioned by the BRC. This paper describes in great detail the history of Federal Indian law, including the rights and powers of Indian tribes, the relationship of the federal government with Indian tribes, and tribal consultation. The BRC should include a summary of this paper in its report, as the recommendations that will be made by the BRC to the President have enormous potential to negatively impact Indian tribes and Indian Country.

Recommendation #3

We support assured access to the balance of the Nuclear Waste Fund (NWF).

As we stated earlier, the success of this recommendation will depend on how much authority, autonomy, and fiscal discretion this new entity will have. How likely it is that Congress will relinquish its appropriation authority to this new entity?

Recommendation #4

We are not sure that a new approach is needed to site and develop waste management and disposal facilities, as a site has already been developed. Unless an explanation is offered as to why the Yucca Mountain site failed technically, we believe that the project should move forward.

There is pending litigation regarding the Yucca Mountain site and it remains to be determined whether the license application can be stopped. It would be very beneficial to include a discussion of the on-going Yucca Mountain litigation in the draft BRC report.

As far as starting over or "doing better" goes, there will always be new information in the future. It is a disservice to the American people to scrap a program that has been in the works for over two decades with an expenditure of $10 Billion by saying "we can do better." We need to make our decisions based on what we know today, and live with those decisions well into the future.

As the report pointed out, many geologic media were initially considered for a repository site: salt domes, bedded salt, crystalline rock (i.e., granite), basalt, volcanic tuff. It will be interesting to see whether the citizens, especially the politicians, agree that "we can do better" when the new siting approach identifies the geologic media in their states as being the best site for a repository.

Recommendation #6

We support the rights of any impacted Indian tribe to be involved in the siting process. Tribes can be impacted in many ways: a proposed site may be near or adjacent to its reservation, on its ceded or aboriginal lands (to which they still may retain hunting, fishing, or gathering rights), or by the transportation of spent nuclear fuel through their lands.

It should be noted and understood that many tribes lack the financial resources to be fully engaged in the process. Tribes, unlike states or counties, are not taxing entities, and will not have the resources that will enable them to be technically engaged. If, through the siting process, it appears that an Indian tribe is impacted, sustained funding should be made available to that tribe (or those tribes, if that is the case) to be able to hire technical and legal experts.

Recommendations for the BRC Report

There are a number of recently released reports and papers that should be summarized and included in the BRC's report, including:

"The Role of Indian Tribes in America's Nuclear Future," by Peter Chestnut and other, April 2011, commissioned by the BRC.

Commercial Nuclear waste: Effects of a Termination of the Yucca Mountain Repository and Lesson Learned, April 2011, by the US Government Accountability Office (GAO).

The BRC report should also include a summary of pending Yucca Mountain litigation, as the outcomes of these cases may affect the recommendations of the BRC.

The Prairie Island Indian Community thanks you for this opportunity comment on this most important issue. We are looking forward to reviewing the BRC's report.

On behalf of the Prairie Island Indian Community Tribal Council, we again invite the BRC to visit Prairie Island for meaningful consultation and collaboration with our Community and to experience firsthand how decisions regarding the short-term, interim, or long-term storage of spent nuclear fuel impact our Community.

Respectfully submitted,

Philip R. Mahowald
General Counsel